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## In the Supreme Court of the United States

OCTOBER TERM, 1937.

THE SCHRIBER-SCHROTH COMPANY,

*Petitioner,*

vs.

THE CLEVELAND TRUST COMPANY,  
CINCINNATI CORPORATION,

*Respondents.*

No. [REDACTED] 3

THE AMERICAN MOTOR SUPPLY COMPANY,

*Petitioner,*

vs.

THE CLEVELAND TRUST COMPANY,  
CINCINNATI CORPORATION,

*Respondents.*

No. [REDACTED] 4

THE F. E. BOWE SALES COMPANY,

*Petitioner,*

vs.

THE CLEVELAND TRUST COMPANY,  
CINCINNATI CORPORATION,

*Respondents.*

No. [REDACTED] 5

### RESPONDENTS' BRIEF OPPOSING PETITION FOR REHEARING.

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for Respondents.*



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THE SCHRIBER-SCHROTH COMPANY,

*Petitioner,*

vs.

THE CLEVELAND TRUST COMPANY,  
CHRYSLER CORPORATION,

*Respondents.*

No. 674.

THE ABERDEEN MOTOR SUPPLY COMPANY,

*Petitioner,*

vs.

THE CLEVELAND TRUST COMPANY,  
CHRYSLER CORPORATION,

*Respondents.*

No. 675.

THE F. E. ROWE SALES COMPANY,

*Petitioner,*

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THE CLEVELAND TRUST COMPANY,  
CHRYSLER CORPORATION,

*Respondents.*

No. 676.

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A. C. DENISON,

F. O. RICHEY,

WM. C. MCCOY,

*Counsel and Solicitors  
for Respondents.*

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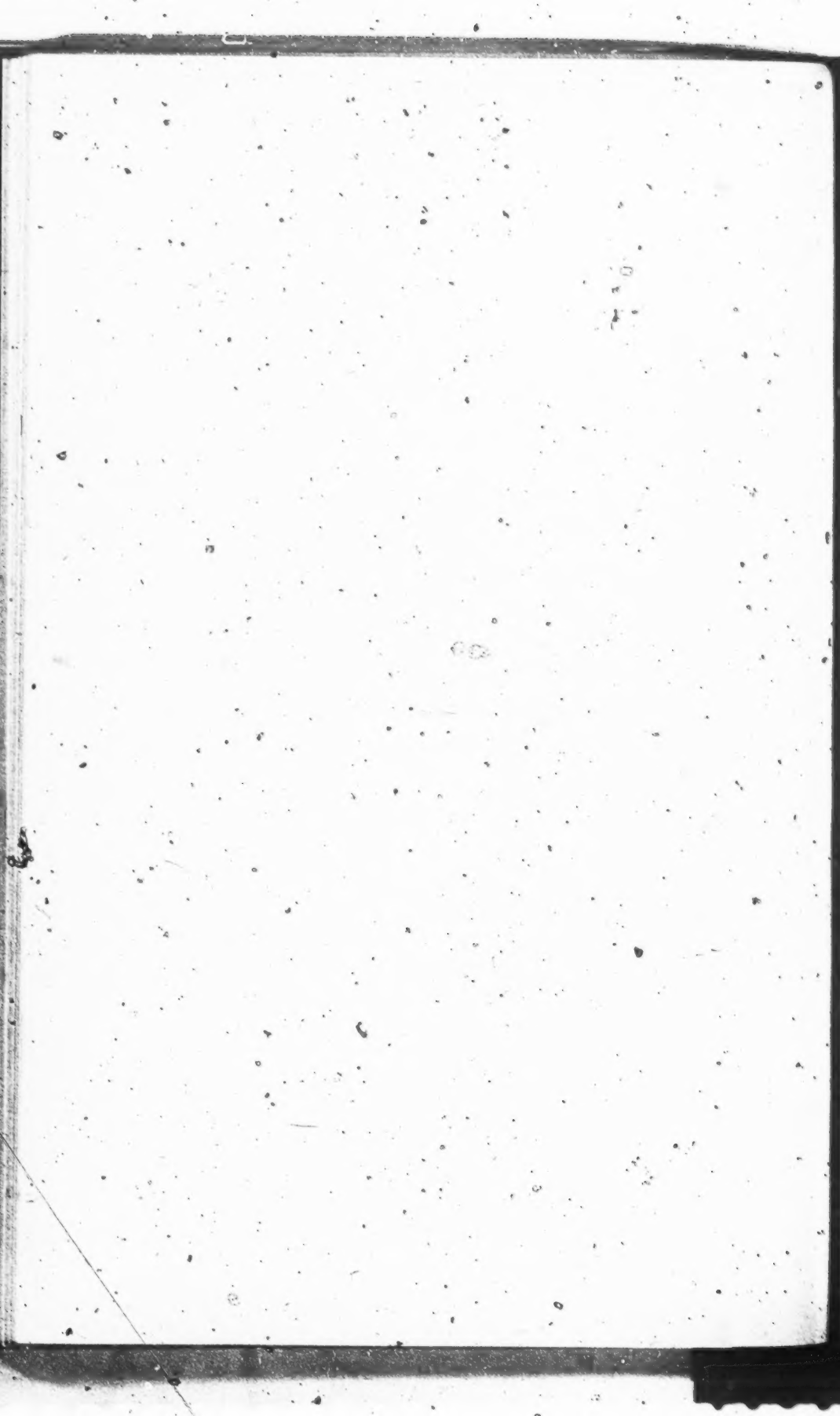
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## **RESPONDENTS' BRIEF OPPOSING PETITION FOR REHEARING.**

No point is now presented which was not fully discussed and presented to this Court in the briefs and the Petition for Writ of Certiorari.

No point or fact within the record is mentioned or referred to as having been overlooked by the Court in its denial of the Petition for Writ of Certiorari.

No new fact or circumstance has arisen or is presented in the Petition for Rehearing.

Petitioners now advance only some statistics, newly published in certain newspapers or trade papers, purporting to color some old facts existing prior to and during the pendency of this case. The authorities cited by petitioners do not support an excursion into current newspaper statistics.

The point which petitioners seek to supplement from the current magazines or newspapers is exactly the same point advanced by petitioners at pages 13 and 14 of its Petition, to which respondents replied at pages 5 and 6 of its brief in opposition thereto; the difference being that in the first instance the parties based their arguments on the record, whereas in the present instance petitioners advance the same argument colored with statistics from the current newspapers.

Moreover, the inferences which petitioners now draw from the newspaper statistics are flatly refuted by the evidence in the record. There is no such proportion, as asserted by petitioners, of pistons embodying the inventions of the patents in suit used within and without the Sixth Circuit. Few of the automobile manufacturers make their own pistons. Only a portion of the pistons used in the automobile industry embody the inventions of the patents in suit,\* and these pistons, with few exceptions, are licensed pistons. (R. p. 180.) Pistons are made by many manufacturers located outside of the Sixth Circuit. (R. pp. 2, 132, 134, 179.) A great proportion of the pistons sold are not for original automobile equipment but are for replacement by dealers and garage men located in every Circuit of the

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\* General Motors, for example, did not use the patented pistons in their regular production of pleasure cars. (R. pp. 179, 262 and 263.) Reo Motor Company and others did not use the patented pistons. (R. pp. 70 and 211.)

United States. (R. p. 143.) The great majority of these replacement pistons are purchased directly from the piston manufacturers and not from the automobile manufacturers. Many other manufacturers, including Diesel and gasoline engine builders, airplane manufacturers, tractor manufacturers, motor cycle engine manufacturers, motor boat and marine engine builders, and other manufacturers using patented as well as unpatented pistons are located in many parts of the United States outside of the Sixth Circuit. (R. p. 211.) It is unimportant that a large proportion of the automobile manufacturers are now located in the Sixth Circuit.

Petitioner cites *Reeke-Nash vs. Swan*, and *Gear Grinding vs. Studebaker*, as examples of litigation confined to one circuit, but in these instances the controlling point was that the entire automobile industry, combining through the Automobile Chamber of Commerce, elected to control the defense in order to gain an omnibus estoppel by judgment in all circuits against the patentee if he were defeated, *Reo vs. Gear Grinding*, 42 F. (2d) 965. In the case at bar the real party in interest, Sterling Products Corporation, a resident of the Eighth Circuit (R. p. 2384), first avoided a commitment of privity with petitioners, and only announced its privity with petitioners when it felt certain of a decision in their favor. At that time Sterling waived its right to stand suit on the merits in the Eighth Circuit, in expectation of enjoying an estoppel in its favor by the Sixth Circuit judgment. Now that the effect of the estoppel is against Sterling, it laments its choice.

Respondents assume that they properly should await termination of a test case in one Circuit before proceeding with duplicate litigation in other Circuits, and that likewise they may withhold litigation until others have had a reasonable opportunity to conform to the rulings of the Court of Appeals of the Sixth Circuit.

As pointed out in our main brief (pages 6 to 19), the only "specification of error" that is urged as controlling in the instant cause is the question of sufficiency of disclosure of the patents in suit. The Court of Appeals of the District of Columbia\* and the Court of Customs and Patent Appeals,\*\* both outside of the Sixth Circuit, each found in harmony with the opinion of the Court of Appeals of the Sixth Circuit on this question. What petitioners seek to gain by this Petition, as well as the Petition for Writ of Certiorari, is a review of the question of sufficiency of disclosure as to which three Courts of Appeal already have found in accord with respondents' contention.

#### CONCLUSION.

We cannot assume with Petitioners that this Court overlooked the instant point when it was presented on the Petition for Writ of Certiorari. Current newspaper statistics can have no additional weight on this point which has been considered and disposed of within the confines of the record of this case.

It is respectfully submitted that the present Petition should be denied.

Respectfully submitted,

A. C. DENISON,  
F. O. RICHEY,  
WM. C. MCCOY,

*Counsel and Solicitors for Respondents.*

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\* 17 Fed. 2d. 686 C. A. D. C.

\*\* 47 Fed. 2d. 365 C. C. P. A.; 47 Fed. 2d. 367 C. C. P. A.